A view expressed in the passage above quoted would, in our judgment, be tantamount to rewriting the section by means of an unauthorized legislative act. We would, therefore, with respect, prefer the reasoning of the board in *Cooray*.

While accepting that under the former s 409 a single act of entrustment B may constitute a man an agent within the section, we would emphasize that for the section to bite, there *must* be evidence that the entrustment was made to the particular accused by way of his business as an agent.

By way of illustration, the managing director of a company who, either by his contract with his company or by general law, is entrusted with C dominion over his company's property is not to be presumed to be falling within the terms of s 409 by reason of that fact alone. A managing director of a company has, no doubt, been held by the general law to be an agent of the company; but he cannot, upon that sole consideration, be held to have been entrusted in the way of his business as an agent. In other words, the section refers — as was contended at the bar of the Privy Council in D *Cooray* — to persons who are professional agents and not to casual agents, such as a company director.

We have dealt with this point because we notice from the charges framed against the first appellant that he was charged with 'being an agent of the Cooperative Central Bank Ltd, to wit, the chief executive and *in* E *such capacity* entrusted with dominion over certain property' etc. On the authority of *Yap Sing Hock* and *Cooray*, the charges against the first appellant were clearly bad.

Even if — and we use this expression advisedly — the charges against the first appellant had been amended at the close of the case for the F prosecution to accord with the language of s 409, it would not have mattered a jot; for the evidence led at the trial did not establish the ingredient that the entrustment to the first appellant was *in the way of his business* as an agent.

It is unfortunate that these matters were overlooked by all concerned during the proceedings in both the courts below. Had those charged with G the adjudicatory function at both levels — in particular the learned appellate judge — properly addressed their minds to the relevant law instead of being unduly concerned with the haphazard manner in which the bank was being run, it is unlikely that such an elementary point would have been missed.

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The conviction on appeal

In acquitting the first appellant after having wrongly called upon his defence, the sessions judge had this to say:

> I From the whole evidence adduced in court, I find that the person who was responsible for the success of the application by the three relatives [of Looi] was Mathimugam and the officer made use of was the second accused and the officer deceived was the first accused. I say so because Mathimugam was the managing director cum chairman, management committee of CCB who de facto was more powerful than the first accused.